

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
HOUSTON REAL ESTATE PROPERTIES,	§	CASE NO. 22-32998
LLC,	§	(Chapter 7)
Debtor.	§	
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JOHN QUINLAN, OMAR KHAWAJA,	§	
AND OSAMA ABDULLATIF,	§	
Movants,	§	ADVERSARY NO. 23-03141
	§	
v.	§	
	§	
HOUSTON REAL ESTATE PROPERTIES,	§	
LLC, et al.,	§	
Respondents.	§	

MOVANTS’ MOTION TO STRIKE NOTICE OF APPEARANCE [ECF Document No. 56] and MOTION TO DISMISS [ECF Document No. 47] for LACK OF CAPACITY or, in alternative, MOTION TO SHOW AUTHORITY

John Quinlan, Omar Khawaja, and Osama Abdullatif, (“Movants”) file this Motion to Strike Notice of Appearance [ECF Document No. 56] and Motion to Dismiss [ECF Document No. 47] for lack of capacity or, in alternative, Motion to Show Authority.

1. This Court appointed Chapter 7 Trustee Randy W. Williams (the “Trustee”) for the debtor, Houston Real Estate Properties, LLC. When a bankruptcy trustee is appointed, “the bankruptcy trustee is the only *[emphasis added]* party that has capacity to bring the claim.” *Madison v. Health CARE Servs. Corp.*, 2022 U.S. LEXIS 192948, 5 (W.D. Tex. 2022) (citing *matter of S.I. Acquisition*, 817 F. 2d 1142, 1153-54 (5th Cir. 1987)). A party possesses capacity when it has legal authority to act. *Id. Coastal Liquids Transp., L.P v. Harris Cty. Appraisal Dist.*, 46 S.W. 3d 880, 884 (Tex. 2001). If a party does not have capacity, then it does not have legal authority to act.

2. Here, in this case, the Court appointed a bankruptcy Trustee for the debtor, and then the Trustee hired Timothy L. Wentworth as its legal counsel. Despite this, Hayward PLLC continues to file pleadings and papers, with the Court, on behalf of the debtor. In fact, Hayward PLLC filed ECF Document Nos. 56 and 47, inter alia, after the appointment of the Trustee. Hayward PLLC does not possess legal authority to act for the debtor. As such, Hayward PLLC lacks capacity, and its filings should be struck from the Court's records.

3. Accordingly, Movants request the Court to strike ECF Document Nos. 56 and 47, filed by Hayward PLLC, along with any other pleadings and or papers filed by Hayward PLLC, on behalf of the debtor, in this cause, after the appointment of the Trustee. Further, Movants seek an order instructing Hayward PLLC to cease and desist from filing additional pleadings and or papers, on behalf of the debtor, in this cause, until further order of this Court instructing differently.

Conclusion

Movants, John Quinlan, Omar Khawaja, and Osama Abdullatif, respectfully ask this Court to strike ECF Document Nos. 56 and 47, filed by Hayward PLLC, along with any other pleadings and or papers filed by Hayward PLLC on behalf of the debtor, in this cause, after the appointment of the Trustee, as well as an instruction to Hayward PLLC to cease and desist from filing additional pleadings and or papers, on behalf of the debtor, in this cause, until further order of this Court, and that Movants have such other and further relief to which they may show themselves justly entitled at law or in equity.

Dated: October 6, 2023.

Respectfully submitted,

HOOVER SLOVACEK LLP

By: /s/ T. Michael Ballases

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**ATTORNEYS FOR MOVANTS AND
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document, *Movant's Motion to Strike Notice of Appearance [ECF Document No. 56] and Motion to Dismiss [ECF Document No. 47] for lack of capacity*, has been served electronically upon each of the parties identified on the Court's ECF Service List maintained in this case, on October 6, 2023, and as additionally noted below.

23-03141 Notice will be electronically mailed to:

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